

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

---

In the Matter of	)	
	)	
Establishing Just and Reasonable Rates for	)	CC Docket No. 07-135
Local Exchange Carriers	)	
	)	

---

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”) responds to initial comments addressing the traffic stimulation issues raised in the Commission’s Notice of Proposed Rulemaking (“NPRM”).<sup>1</sup> In the absence of major reforms to the existing intercarrier compensation system, CTIA supports the measures proposed by wireless providers to curb local exchange carriers’ (“LECs”) artificial stimulation of access and local termination traffic. As the commenters explain, to be effective, remedies should: (1) cover both originating and terminating access rates; (2) address intercarrier charges imposed by both competitive local exchange carriers (“CLECs”) as well as incumbent local exchange carriers (“ILECs”); and (3) encompass both reciprocal compensation and access charges.

**I. INTRODUCTION**

Commenters correctly observe that the traffic stimulation activities noted in the NPRM are “symptoms” of the inevitable market distortions generated by an intercarrier compensation system that arbitrarily imposes disparate intercarrier charges based on artificial distinctions

---

<sup>1</sup> *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd 17989 (2007) (“NPRM”).

among different jurisdictional and technological categories of traffic and types of providers.<sup>2</sup>

Under these schemes, certain rate-of-return regulated local exchange carriers take advantage of their high intercarrier rates by arranging to provide access and local termination services to high traffic volume service providers, such as “chat rooms” and free or low cost conference calling services and international calling services. These service providers typically attract a much greater call volume than the historic level of demand assumed in setting rural ILEC access and reciprocal compensation rates, or the ILEC rates used to benchmark CLEC access rates. Because their costs do not rise proportionately, the resulting increased volume and revenues enable them to achieve a level of earnings “unintended by the [Commission’s] rules.”<sup>3</sup>

These artificially inflated intercarrier charges increase their competitors’ and all consumers’ costs. Wireless providers, which utilize interconnections with LECs to reach the public switched telephone network, are especially vulnerable to traffic stimulation schemes. Even in the absence of traffic pumping, wireless carriers are disproportionately burdened by an asymmetric regime in which they themselves cannot impose access charges unilaterally but must pay terminating access charges to all LECs. Increasing LEC intercarrier charges through non-economic demand stimulation further aggravates the anticompetitive, regressive impact of the current regime.<sup>4</sup>

Adoption of CTIA’s Mutually Efficient Traffic Exchange (“METE”) Proposal or similar meaningful reforms submitted in the *Inter-carrier Compensation* proceeding would be the most

---

<sup>2</sup> Leap Wireless Comments at 7. Initial comments filed in response to the NPRM will be cited in this abbreviated manner.

<sup>3</sup> *Qwest Communications Corp. v. Farmers and Merchants Mutual Tel. Co.*, 22 FCC Rcd 17973, 17984 (2007) (quoted in Qwest Comments at 13). *See also, e.g.*, Verizon Comments at 8-13.

<sup>4</sup> Leap Wireless Comments at 2-4.

effective way to reform the arbitrary, discriminatory, uneconomic intercarrier compensation rates now burdening carriers and consumers.<sup>5</sup> Short of comprehensive intercarrier compensation reform, however, CTIA endorses the types of remedies that wireless providers have proposed to curb artificial traffic stimulation. As discussed below, CTIA supports commenters advocating remedies that: (1) cover both originating and terminating access rates;<sup>6</sup> (2) address intercarrier charges imposed by CLECs as well as ILECs;<sup>7</sup> and (3) encompass both reciprocal compensation and access charges.<sup>8</sup>

## **II. CTIA Supports Adoption Of Proposed Remedies For Both Access And Local Termination Traffic Stimulation.**

As MetroPCS, Leap Wireless and other parties demonstrate, wireless providers, which receive relatively little intercarrier compensation, are adversely affected by the same access stimulation activities as other carriers.<sup>9</sup> Even in the case of a wireless provider that does not pay significant access charges itself, its fees to interexchange carriers (“IXCs”) to provide the long distance portion of interMTA calls necessarily reflect the increased access charges those IXCs must pay. The impact of the increased access charges passed along by the IXCs is amplified by the unlimited long distance calling allowed by the typical wireless service contract. The resulting increased long distance transport costs must ultimately be recovered from the wireless

---

<sup>5</sup> *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) (“*Intercarrier Compensation*”).

<sup>6</sup> See Sprint Nextel Comments at 4-5; Qwest Comments at 6-7.

<sup>7</sup> See, e.g., AT&T Comments; Sprint Comments; Verizon Comments.

<sup>8</sup> See Leap Wireless Comments; Metro PCS Comments.

<sup>9</sup> Leap Wireless Comments at 2-3, 5-7; MetroPCS Comments at 2.

provider's customers.<sup>10</sup> Accordingly, CTIA supports the remedies proposed by AT&T, Verizon and other IXCs to curb access traffic stimulation.

**A. Traffic Pumping Remedies Must Address CLECs As Well As ILECs.**

As AT&T, Qwest and other parties point out, CLECs now account for more traffic stimulation than ILECs, as access stimulation schemes have shifted from ILECs to CLECs to avoid increased Commission oversight of rural ILECs.<sup>11</sup> Thus, CLECs should be subject to traffic stimulation restraints equivalent to those imposed on ILECs. Otherwise, traffic pumpers will start new CLECs to replace those ILECs prohibited from these activities.<sup>12</sup> CLEC access rates, however, are not rate of return regulated. Rather, they are “benchmarked” to the rate of the adjacent “competing ILEC” or, in the case of CLECs covered by the “rural exemption” in Commission Rule 61.26(e), to the highest National Exchange Carrier Association (“NECA”) rates.<sup>13</sup> Accordingly, any mechanism devised to curb ILEC traffic pumping must be tailored to address CLEC activities.<sup>14</sup>

**B. The Proposed Remedies Can Reduce Access Traffic Stimulation.**

CTIA urges the adoption of some version of each of the following four categories of proposed remedies to reduce or eliminate uneconomic access traffic stimulation. For the most part, the proposed remedies would apply specifically to those small ILECs that file their own tariffs under Commission Rules 61.38 or 61.39 (“Covered ILECs”) and rural CLECs because

---

<sup>10</sup> Leap Wireless Comments at 5.

<sup>11</sup> AT&T Comments at 3, 6; Qwest Comments at 3, 8.

<sup>12</sup> AT&T Comments at 3.

<sup>13</sup> 47 C.F.R. § 61.26(e).

<sup>14</sup> Qwest Comments at 7.

those categories of LECs are enabled by the current rules to profit the most from traffic stimulation schemes.<sup>15</sup>

**Quarterly Access Traffic Reporting:** AT&T and other carriers recommend that Covered ILECs and CLECs that take advantage of the rural CLEC exemption to the Commission's benchmarking rules or that benchmark to a rural ILEC's rate be required to report access traffic volume on a quarterly basis.<sup>16</sup> Such reporting will provide transparency to help deter traffic pumping schemes and disclose schemes that might develop.

**Mandatory Certifications:** Carriers recommend that Covered ILECs and CLECs be required to submit, either in connection with any switched access tariff filing or annually, a statement by an officer of the LEC certifying that the LEC has not entered into and will not enter into arrangements under which the LEC compensates third parties for their stimulation of the LEC's traffic.<sup>17</sup>

**Traffic Thresholds Triggering Reduced Rates:** A number of carriers propose that small LECs be required to file revised switched access tariffs with reduced rates if their access traffic exceeds specified thresholds.<sup>18</sup> Covered ILECs would have to refile within a specified period after the end of any month or quarter in which their access traffic increased by more than

---

<sup>15</sup> 47 C.F.R. §§ 61.38-.39. Verizon argues that a few ILECs participating in the NECA pool also engage in traffic pumping and supports the proposal in the NPRM to require NECA to amend its average schedule formulas to preclude such activities. Verizon Comments at 20. Qwest also proposes special rules for average schedule ILECs. Qwest Comments at 19-20.

<sup>16</sup> See, e.g., AT&T Comments at 20-21.

<sup>17</sup> AT&T Comments at 21-23; Sprint Nextel Comments at 19-20; Verizon Comments at 18-19. CTIA's support for a certification requirement should not be read as support for any restriction on existing revenue sharing arrangements, or similar arrangements, under which wireless providers direct 8YY traffic originated by their customers to specific CLECs. See Hypercube/McLeodUSA Telecommunications Comments at 9.

<sup>18</sup> See, e.g., AT&T Comments at 4, 27-32; Sprint Nextel Comments at 13-19.

a specified percentage year-over-year.<sup>19</sup> CLECs exceeding a specified average monthly access traffic volume per line would no longer be allowed to file tariffs relying on the rural exemption or to benchmark to a rural ILEC's rate. Those CLECs would have only the options of offering services on a detariffed basis or benchmarking to a stricter standard, such as the switched access rates of the Regional Bell Operating Company in the CLEC's state.<sup>20</sup>

**Denying Streamlined Tariff Treatment Under Specified Circumstances:** Carriers advocate two approaches by which LEC tariffs involving or reflecting traffic pumping practices could be deprived of "streamlined" tariff treatment under Section 204(a)(3) of the Communications Act ("the Act"), which confers "deemed lawful" status on LEC streamlined tariffs unless they are suspended or rejected.<sup>21</sup> AT&T, Verizon and Qwest propose that the Commission deny deemed lawful status to any switched access tariff accompanied by a certification that turns out to have been false when made, *e.g.*, if the LEC intentionally concealed an intent to enter into a traffic pumping arrangement.<sup>22</sup> Under Sprint Nextel's approach, if a

---

<sup>19</sup> Verizon Comments at 13-15; AT&T Comments at 27-29; Sprint Nextel Comments at 13-17; Qwest Comments at 18, 20-22. For the most part, the new tariffs would have to be filed under Rule 61.38, in order for rates to fully reflect the revised traffic data. AT&T Comments at 29; Verizon Comments at 15-17.

<sup>20</sup> Sprint Nextel Comments at 18-19; AT&T Comments at 30-32; Verizon Comments at 26-28. Verizon's preference, in the case of CLECs claiming the rural exemption, is to eliminate that exemption altogether. Verizon Comments at 23-26. Qwest takes the most stringent prophylactic approach to CLEC access rates by advocating elimination of not only the CLEC rural exemption but also CLEC benchmarking to rural ILEC rates under any circumstances. Qwest Comments at 24-29.

<sup>21</sup> 47 U.S.C. § 204(a)(3).

<sup>22</sup> AT&T Comments at 24-26; Verizon Comments at 19; Qwest Comments at 29-30.

LEC's access traffic exceeds the refiling threshold, its switched access tariff would lose its deemed lawful status, and the refiled tariff would not be eligible for streamlined treatment.<sup>23</sup>

These measures offer great promise in helping to deter or rectify schemes to inflate access traffic artificially. Because wireless providers are disproportionately burdened by the increased access charges that enable these schemes, CTIA supports the adoption of each of these types of remedies.

**C. Wireless Proposals Would Effectively Address Local Termination Traffic Stimulation.**

As Leap Wireless and MetroPCS point out, the artificial traffic stimulation schemes that affect wireless carriers encompass not only access traffic but also local termination traffic covered by reciprocal compensation requirements, and any solution must therefore address both categories.<sup>24</sup> Otherwise, LECs “will merely reconfigure” their schemes to “exploit[] the local reciprocal compensation marketplace.”<sup>25</sup> Reciprocal compensation rates paid by wireless carriers are not tariffed at the federal or state level, and proposed remedies such as tariff certifications and tariff refiling triggers are therefore ineffective in addressing local traffic stimulation schemes.<sup>26</sup>

Leap and MetroPCS propose instead that the mechanism imposed in the *ISP Remand Order* be applied to local termination traffic.<sup>27</sup> They point out that the Commission was faced

---

<sup>23</sup> Sprint Nextel Comments at 15-17.

<sup>24</sup> Leap Wireless Comments at 3, 5, 8-9; MetroPCS Comments at 2-3, 5-7.

<sup>25</sup> MetroPCS Comments at 14. *See also id.* at 9-10.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act*, 16 FCC Rcd 9151 (2001) (“*ISP Remand Order*”), *remanded on other grounds, WorldCom, Inc. v. FCC*,

with a similar traffic stimulation situation in that case, in which CLECs targeted Internet Service Providers (“ISPs”) as customers because they attracted ““high volumes of incoming traffic . . . generat[ing] high reciprocal compensation payments”” for the CLECs.<sup>28</sup> The Commission noted that traffic that ““flows exclusively in one direction[] creat[es] an opportunity for regulatory arbitrage . . . leading to uneconomical results.””<sup>29</sup> The Commission addressed the resulting ““market distortions””<sup>30</sup> by transitioning the amount of terminating compensation a CLEC could receive down to \$0.0007/minute when its local traffic exceeded a 3:1 ratio of terminating to originating traffic.<sup>31</sup>

Leap Wireless builds upon the rules for ISP-bound calls by proposing that a LEC’s overall traffic -- access as well as local termination traffic -- in excess of a 3:1 ratio of terminating to originating traffic be subject to bill-and-keep.<sup>32</sup> Alternatively, Leap Wireless proposes that the Commission apply the ISP-bound rate of \$0.0007 per minute for carriers that

---

288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, *Core Communications, Inc. v. FCC*, 2003 U.S. LEXIS 3478 (2003).

<sup>28</sup> *Id.* at 9182 (quoted in MetroPCS Comments at 11).

<sup>29</sup> *Id.* at 9162 (quoted in MetroPCS Comments at 11).

<sup>30</sup> *Id.* at 9154 (quoted in MetroPCS Comments at 11).

<sup>31</sup> *Id.* at 9187-88.

<sup>32</sup> Leap Wireless Comments at 8-9. Under MetroPCS’s approach, the Commission would establish a rebuttable presumption that a LEC’s local traffic in excess of a 3:1 ratio of terminating to originating traffic is stimulated traffic subject to a default rate of \$0.0007/minute, which would transition to bill-and-keep over time. MetroPCS Comments at 13-14. In the case of a LEC exchanging local traffic with a wireless provider, these rules would apply only if there were an agreement governing their exchange of traffic. In the absence of an agreement, wireless providers have no obligation to compensate LECs for the termination of non-access traffic. *Developing a Unified Intercarrier Compensation Regime*, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855, 4863-64 (2005) (“*T-Mobile Order*”).

experience such imbalanced traffic.<sup>33</sup> Leap Wireless and MetroPCS also propose that growth in the imbalanced traffic be capped, similar to a growth cap imposed in the *ISP Remand Order*, so that no compensation is paid for terminating local traffic that exceeds the traffic ratio existing as of the date of release of the NPRM.<sup>34</sup> Based on the success of the *ISP Remand Order* in curbing excessive ISP-bound traffic, the wireless carriers argue that the self-effectuating default mechanism they propose would be far simpler and less regulatory than the remedies proposed to address access traffic stimulation.<sup>35</sup>

Locally terminated traffic should be addressed in any rules promulgated in this proceeding, and some form of the ISP-bound traffic model proposed by Leap Wireless and MetroPCS should be adopted. The Commission has undisputed authority to provide remedies for local termination traffic stimulation, including calls originated by wireless providers and terminated by LECs. Section 251(b)(5) of the Act affirmatively provides authority to establish pricing rules governing interconnected local calls, including reciprocal compensation arrangements for the exchange of intraMTA traffic between LECs and wireless providers.<sup>36</sup> In

---

<sup>33</sup> This rate limitation would apply only if the access rate or negotiated reciprocal compensation rate that would otherwise govern is higher.

<sup>34</sup> MetroPCS Comments at 13; Leap Wireless Comments at 9. In the case of Leap Wireless, the growth cap would apply if the \$0.0007/minute rate otherwise governed. Leap Wireless Comments at 9.

<sup>35</sup> Leap Wireless Comments at 9; MetroPCS Comments at 3-4, 10, 12-13.

<sup>36</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report & Order, 11 FCC Rcd 15499, 16016 (1996) (“*Local Competition Order*”) (subsequent history omitted).

addition, the Commission has authority to establish pricing rules governing “non-access” wireless traffic terminated by LECs under Sections 201 and 332 of the Act.<sup>37</sup>

### III. CONCLUSION

Until full-scale reform of the current intercarrier compensation system can be implemented, CTIA urges that the Commission adopt the remedies proposed in wireless carriers’ initial comments to curb local termination and access traffic stimulation schemes.

Respectfully submitted,

/s/ Paul W. Garnett

Paul W. Garnett

Assistant Vice President, Regulatory Affairs

Michael F. Altschul

Senior Vice President and General Counsel

Christopher Guttman-McCabe

Vice President, Regulatory Affairs

**CTIA – The Wireless Association®**

1400 16<sup>th</sup> Street, N.W. Suite 600

Washington, D.C. 20036

(202) 785-0081

Date: January 16, 2008

---

<sup>37</sup> *T-Mobile Order*, 20 FCC Rcd at 4863-64. This authority includes the imposition of a bill-and-keep reciprocal compensation system. Section 252(d)(2) expressly notes that it should not be construed to “preclude . . . arrangements that waive mutual recovery (such as bill-and-keep arrangements). . . .” 47 U.S.C. § 252(d)(2)(B)(i). Further, the Commission has held that the term “waive” in the quoted language is not limited to voluntary agreements and that bill-and-keep can be imposed under Section 252(d)(2). *Local Competition Order*, 11 FCC Rcd at 16054.